

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CASE NO.: 1:23-cv-09767

MIKE THEISS,

Plaintiff,

v.

A&E TELEVISION NETWORKS, LLC,

Defendant,

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff MIKE THEISS by and through his undersigned counsel, brings this Complaint against Defendant A&E TELEVISION NETWORKS, LLC for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff MIKE THEISS ("Theiss") brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Theiss' original copyrighted Works of authorship.

2. Mike Theiss is a videographer with over 37 years of storm chasing experience. Theiss has witnessed and documented several extremely dangerous natural events including hurricanes, tornadoes, lightning, volcanoes, waterspouts, hail, flooding, storm surge, blizzards, ice storms, and fires. His photos and videos have been enjoyed worldwide through his work with National Geographic, Inside Edition, ABC News, National Hurricane Center, as well as many other media and government agencies. His motto is "I never wish for a Natural Disaster to happen, But IF it happens, I want to be there to document it and share with the world an important message of awareness and respect for NATURE."

SRIPLAW

CALIFORNIA ♦ GEORGIA ♦ FLORIDA ♦ INDIANA ♦ TENNESSEE ♦ NEW YORK

3. Theiss' videos of extreme weather events are frequently copied by infringers. Plaintiff is a popular and frequent source of footage of weather events that cannot be obtained elsewhere. This makes Plaintiff a frequent target for infringers.

4. Defendant A&E TELEVISION NETWORKS, LLC ("A&E") is an American basic cable network. Originally founded in 1984 as the Arts & Entertainment Network, A&E primarily shows non-fiction programs, including reality shows, true crime shows, documentaries and miniseries. Some of A&E's most popular shows include The First 48, Intervention, Hoarders, Biography, and Cold Case Files. At all times relevant herein, A&E created and broadcasted the television show entitled 'Apocalypse Earth' ("Apocalypse").

5. Theiss alleges that A&E copied Theiss' copyrighted Works from prior licensed uses in order to advertise, market and promote its business activities. A&E committed the violations alleged in connection with Defendant's business for purposes of advertising and promoting sales to the public in the course and scope of the A&E's business.

JURISDICTION AND VENUE

6. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

7. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

8. Defendant is subject to personal jurisdiction in New York.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, A&E engaged in infringement in this district, A&E resides in this district, and A&E is subject to personal jurisdiction in this district.

DEFENDANT

10. A&E Television Networks, LLC is a Delaware Limited Liability Company, with its principal place of business at 235 E. 45th Street, New York, New York, 10005, and can be served by serving its Registered Agent, C T Corporation System, 28 Liberty Street, New York, New York, 10005.

THE COPYRIGHTED WORKS AT ISSUE

11. In 2004 and 2005, Theiss created the videos entitled “Double Trouble – Hurricane Charley & Ivan Video” and “Hurricanes 2005”, which are referred to herein as the “Works”.

12. Theiss registered the Works with the Register of Copyrights on November 23, 2005 and June 27, 2005, and was assigned registration numbers PAu 3-004-741 and PAu 1-293-164. The Certificates of Registration are attached hereto as **Exhibit 1**.

13. Theiss’ Works are protected by copyright but were not otherwise confidential, proprietary, or trade secrets.

14. At all relevant times Theiss was the owner of the copyrighted Works at issue in this case.

INFRINGEMENT BY A&E

15. A&E was previously licensed to use the Works at issue in this action only in connection with the television series “Deadliest Planet.”

16. The name of the television series “Deadliest Planet” was later changed to “Serial Killer Earth.”

17. The license to A&E was limited to the television series “Deadliest Planet” (a/k/a “Serial Killer Earth) and was never extended to include any other series, movie, or production.

18. On or about November 15, 2020, Theiss discovered the unauthorized use of the Works on A&E broadcasts in the “Apocalypse Earth” television show.

19. Approximately four hundred twenty-five (425) seconds of Theiss' copyrighted works appear in the Apocalypse Earth television show.

20. The works appear in Season 1, Episode 4 of "Apocalypse Earth" entitled "Hurricanes: Storms of Destruction".

21. A&E slowed down the footage that it received from Theiss in the "Serial Killer Earth" licensing agreement to make the production longer.

22. A&E copied Theiss' copyrighted Works without Theiss' permission.

23. A&E's use of the Works was without permission or license from Theiss.

24. After A&E copied the Works, it made further copies and distributed the Works on its basic cable television network programming to promote the sale of advertising.

25. A&E further distributed the show to other digital streaming platforms, such as Amazon Prime Video.

26. A&E copied and distributed Theiss' copyrighted Works in connection with Defendant's business for purposes of advertising and promoting Defendant's business, and in the course and scope of advertising and selling products and services.

27. Theiss' Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

28. Theiss never gave Defendant permission or authority to copy, distribute or display the Works at issue in this case.

COUNT I
COPYRIGHT INFRINGEMENT

29. Theiss incorporates the allegations of paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. Theiss owns valid copyrights in the Works at issue in this case.

31. Theiss registered the Works at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

32. A&E copied, displayed, and distributed the Works at issue in this case and made derivatives of the Works without Theiss' authorization in violation of 17 U.S.C. § 501.

33. A&E performed the acts alleged in the course and scope of its business activities.

34. Defendant's acts were willful.

35. Theiss has been damaged.

36. The harm caused to Theiss has been irreparable.

WHEREFORE, the Plaintiff MIKE THEISS prays for judgment against the Defendant A&E TELEVISION NETWORKS, LLC that:

a. A&E and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. A&E be required to pay Theiss its actual damages and Defendant's profits attributable to the infringement, or, at Theiss' election, statutory damages, as provided in 17 U.S.C. § 504;

c. Theiss be awarded its attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Theiss be awarded pre- and post-judgment interest; and

e. Theiss be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Theiss hereby demands a trial by jury of all issues so triable.

DATED: November 3, 2023

Respectfully submitted,

/s/ Joel Benjamin Rothman

JOEL BENJAMIN ROTHMAN

NY Bar Number: JR0352

Joel.rothman@sriplaw.com

JOSEPH A. DUNNE

NY Bar Number: JD0674

Joseph.dunne@sriplaw.com

RACHEL I. KAMINETZKY

NY Bar Number: 6030647

Rachel.kaminetzky@sriplaw.com

SRIPLAW, P.A.

175 Pearl Street

Third Floor

Brooklyn, NY 11201

561.404.4350 – telephone

561.404.4353 – facsimile

Counsel for Plaintiff Mike Theiss